

SUMMARY ANALYSIS OF AMENDED BILL

Author: Haynes Analyst: Kristina E. North Bill Number: SB 1273Related Bills: See Prior Analysis Telephone: 845-6978 Amended Date: April 24, 2002Attorney: Patrick Kusiak Sponsor: _____**SUBJECT:** Contributions to Nonprofit Educational Assistance Organization Credit/Private Funding for Educational Assistance Act

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _____.

X AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.X AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced January 15, and amended April 2, 2002.X FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO _____.

X REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED January 15, AND AMENDED April 2, 2002, STILL APPLIES.X OTHER - See comments below.**SUMMARY**

This bill would create a credit for monetary donations to a nonprofit organization that provides scholarships to K-12 students in public or private schools.

SUMMARY OF AMENDMENT

The April 24, 2002, amendments:

- ◆ reduce the credit percentage to 20% of the contributions from 70%;
- ◆ change the percentages for distribution of contributions to 50% from 70% and 30%, respectively;
- ◆ create both an annual total combined limit of \$149,000 for the personal income tax and corporation tax credits and an ordering provision to grant the credit on an as-filed basis;
- ◆ require a nonprofit organization to distribute funds on a "needs basis" to students:
 1. in low performing or overcrowded schools;
 2. with special discipline, academic, or physical needs justifying financial assistance;
 3. that are children of inmates;
 4. from single-parent or low-income households;
 5. are at-risk; or
 6. have been neglected or abused
- ◆ make other technical or nonsubstantive changes.

Board Position:

<u> </u> S	<u> </u> NA	<u> </u> NP
<u> </u> SA	<u> </u> O	<u> </u> NAR
<u> </u> N	<u> </u> OUA	<u> X </u> PENDING

Legislative Director

Date

Brian Putler

5/24/02

By reducing the credit percentage from 70% to 20% of the contributions, the April 24, 2002, amendments resolved the policy concern regarding more than a 100% return of contributions when combined with the federal charitable contribution deduction. Except for this change, the amendments did not resolve the remaining implementation, policy, and technical concerns discussed in the department's analyses of the bill as introduced January 15, and amended April 2, 2002. As a result of the new amendments, the department has identified new and modified existing implementation concerns. For convenience, all new and existing concerns and the Board position are provided below. Except for the new concerns, and the new revenue estimate, the remainder of the department's analyses of the bill as introduced January 15, and amended April 2, 2002, still applies.

POSITION

Neutral, if amended.

On March 25, 2002, the Franchise Tax Board voted 2-0 on the January 15, 2002, version to be neutral on this bill if it is amended to resolve the department's policy and implementation concerns.

Summary of Suggested Amendments

Department staff is available to assist with amendments to resolve the implementation, technical, and policy concerns discussed in this analysis.

IMPLEMENTATION CONSIDERATIONS

Department staff has identified the following implementation concerns.

New Considerations

The department lacks the expertise to verify many of the requirements specified in this bill as stated in the existing considerations discussed below. Additionally, the new provision setting a \$149,000 annual aggregate credit limit would further complicate implementation and administration of this credit. Since several dozen employees may be entering information at the same time, the department's systems are not currently designed to determine when a particular credit has reached a specified aggregate amount. Reprogramming the systems to determine when a credit limit has been reached on a first-come, first-served basis would be extremely difficult and costly. The author may wish to specify a certification agency that has the expertise and the ability to verify that the bill's requirements are met and grant credit amounts, such as the Tax Credit Allocation Committee which certifies both low-income housing and farmworker housing credits.

Clarification is needed for the term "needs basis" as well as those definitions listed under existing considerations. Parameters to determine if funds are distributed to the intended recipients are not given. For example, it is unclear to what extent and by whom a child must have been neglected or abused to qualify to receive funds.

Existing Considerations

The definition of “nonprofit educational assistance organization” (organization) has several grammatical and structural issues that make this bill confusing to read and difficult to administer. For example:

- ◆ It appears that the intent of the bill is that the organization must distribute at least 90% of its qualified contributions toward educational assistance, with no more than 10% of qualified contributions being used for marketing and administrative expenses. However, as written this bill specifies that no more than 10% of the 90% of qualified contributions distributed toward educational assistance may be used for marketing and administrative expenses and it does not address the remaining percentage.
- ◆ To establish eligibility as a nonprofit organization, an organization must distribute 90% of its qualified contributions toward educational assistance. Since the 90% test cannot be satisfied until after qualified contributions have been made, it is unclear if the satisfaction of the 90% distribution test establishes eligibility for the credit for contributions made before the 90% test was satisfied. Additionally, the bill does not specify how the distribution is determined or during what time frame this limitation should be satisfied. Further, it is unclear if the 90% distribution is for *each* taxpayer contribution or *all* taxpayer contributions received during some specified time period. It is unclear if the 90% test must be satisfied annually, or on some other basis. It is unclear what affect an organization's failure to satisfy or maintain the 90% requirement will have on a taxpayer's eligibility for the credit.
- ◆ The bill requires a nonprofit organization to “distribute” its qualified contributions and “allocate” its annual revenue in accordance with certain rules. However, the intent of the term “allocate” can mean “set apart for a particular purpose” or it can also mean allot or distribute. Ambiguous eligibility requirements will complicate implementation and administration of this credit.
- ◆ It appears the intent of the bill is that an organization must demonstrate a pattern of giving priority in awarding scholarships to students with the greatest need. However, as written, this bill could be interpreted to require that *the student* to whom the scholarship is awarded, not the organization, must demonstrate this pattern.
- ◆ The bill requires an organization to identify the number of vacancies in “eligible” nonpublic schools and then limit the amount of “accepted qualifying contributions” to amounts necessary to provide scholarships to the same number of students. These requirements alter the availability of the credit to only those contributions that are “accepted” and only to the extent of dollar amounts to be determined by an eligible organization. However, no time frame and no parameters are provided for “accepting” or otherwise “limiting” contributions, or determining vacancies. In the absence of third-party involvement, these limitations will be difficult for the department to implement and administer. Also, the term “eligible” nonpublic school suggests something in addition to nonpublic schools as currently defined, but the term is not further defined.

- ◆ In addition to the above concerns with the definition of “nonprofit educational assistance organization,” the last two subparagraphs of this definition are extremely confusing. Multiple concepts are addressed making the credit particularly problematic to administer. The author may wish to consider revising the language.
- ◆ Within the definition of “nonprofit educational assistance organization,” several credit requirements are specified. The department does not have the expertise or ability to verify many of these requirements, including information pertaining to students, student funding, transportation funding, attendance, and school district funding. In addition, state law restricts the release of information pertaining to student records. School districts do not have a method for tracking individual students. Information is not available to determine if a particular student who receives a scholarship met the state’s compulsory attendance requirement. Further, no requirement is provided for the school, or school district, to provide student or funding information to the organization, the taxpayer, or the department. Verification of these credit requirements would be difficult, if not impossible, for the department.
- ◆ The credit amount is based on qualified contributions made by a taxpayer during a *taxable* year; the organization must meet certain qualifications based on a state *fiscal* year; and scholarships are distributed based on a *school* year. All of these types of years begin and end with different dates. It would be helpful if only one type of measurement period or “year,” preferably “taxable year,” was used to reduce potential confusion and administrative complexity.

Definitions are needed for “educational assistance,” “administrative expenses,” “greatest need,” “state’s share,” “total program,” “funded pupil count,” “allocate,” and “private educational supplies and materials.”

This bill contains language that would specifically grant FTB the authority to prescribe rules or regulations to administer and enforce the provisions of this new credit. However, existing law already provides FTB the authority to prescribe interpretive regulations (Revenue and Taxation Code §19503). Thus, it is unclear if the author intended to provide FTB with a specific legislative delegation of additional regulatory authority to prevent potential misuse of this credit.

TECHNICAL CONSIDERATION

This bill uses the terms “pupil” and “student” interchangeably. The April 2nd amendments replaced some, but not all, occurrences of the term “pupil” with the term “student.” To the extent the use of the term “pupil” or “student” is not a term of art, the author may wish to consider consistent use of a single term.

POLICY CONCERN

This bill does not contain a sunset date. Sunset dates generally are provided to allow periodic review by the Legislature.

FISCAL IMPACT

The department's costs to administer this bill cannot be determined until implementation concerns have been resolved.

ECONOMIC IMPACT

Revenue Estimate

This bill, as amended, would result in revenue losses of \$149,000 per year beginning in 2002/2003.

Any possible changes in employment, personal income, or gross state product that might result from this proposal are not taken into account.

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